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No. 83-23

In the Supreme Court of the United States

OCTOBER TERM, 1983

IREDELL MEMORIAL HOSPITAL, INC., PETITIONER

v.

SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner contends that the Secretary of Health and Human Services acted unlawfully in denying Medicare reimbursement for a portion of the cost of care of indigent patients that hospitals are required to provide without charge as a condition to receipt of federal construction subsidies under the Hill-Burton Act, 42 U.S.C. 291 *et seq.*

1. Petitioner received a federal construction subsidy in the amount of $1,286,568 under the Hill-Burton Act (Pet. App. A15). As a statutory condition to receipt of the Hill-Burton funds, petitioner promised to provide a reasonable volume of free medical care to indigent persons. The Hill-Burton regulations exclude from the computation of free medical care "[a]ny amount which the [hospital] has received, or is entitled to receive, * * * under a governmental program." 42 C.F.R. 53.111(f)(2)(i).

Petitioner also is a provider of medical services under the Medicare program (42 U.S.C. (& Supp. V) 1395 *et seq.*). That program reimburses providers for their "reasonable costs" in treating Medicare patients. The "reasonable cost" of any service is "the cost actually incurred," and is to be "determined in accordance with regulations" promulgated by the Secretary of Health and Human Services. 42 U.S.C. 1395x(v)(1)(A). These regulations must "take into account * * * [providers'] direct and indirect costs," but may not impose Medicare costs on non-Medicare patients, or conversely, impose non-Medicare costs on the Medicare program. *Ibid.* In addition, the Medicare program provides no reimbursement if the individual receiving medical care "has no legal obligation to pay" for the care or if a government entity pays "directly or indirectly" for the individual's care. 42 U.S.C. 1395y(a)(2) and (3). The Secretary's Medicare regulations expressly exclude "charity allowances"—defined as "reductions in charges made by the provider of services because of the indigence or medical indigence of the patient"—from reimbursement. 42 C.F.R. 405.420(a) and (b)(2).

Petitioner attempted to obtain Medicare reimbursement for a portion of its expenditures for the free care it was required to provide as a condition to receiving Hill-Burton funds. The Provider Reimbursement Review Board denied petitioner's claim (Pet. App. A30-A40), and petitioner filed suit challenging that decision in the United States District Court for the Western District of North Carolina. The district court rejected as "erroneous and contrary to the statute" the Secretary's position that Medicare reimbursement is not available to cover free care costs, since the court concluded that such costs are "indirect costs" within the meaning of the Medicare legislation (*id.* at A27-A28).

The court of appeals reversed (Pet. App. A1-A11). The court held that the Secretary had acted properly in adhering to her longstanding policy of disallowing Medicare reimbursement for the costs hospitals incur in providing a reasonable number of indigent persons with free care in partial fulfillment of Hill-Burton obligations, since that policy is "consistent with the limitations on Medicare reimbursement set forth in the Medicare Act itself" (*id.* at A10). The court concluded that permitting Medicare reimbursement for Hill-Burton free care costs "would defeat the intent of Congress as expressed in both of the Acts" (*id.* at A11).[1]

2. Petitioner's challenge to the Secretary's denial of Medicare reimbursement of Hill-Burton free care costs is virtually identical to contentions that are now before this Court in *Johnson County Memorial Hospital* v. *Heckler*, No. 82-1805, and *St. James Hospital* v. *Heckler*, No. 82-2152. We have addressed these contentions in our Brief in Opposition in *Johnson County* and our Memorandum in Opposition in *St. James Hospital*, pointing out that the court of appeals' decisions upholding the Secretary's denial of Medicare reimbursement of Hill-Burton free care costs are correct and in accord with the decisions of five other courts of

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[1]While the case was on appeal, Congress passed the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), Pub. L. No. 97-248, 96 Stat. 324. Section 106 of TEFRA (96 Stat. 337) amended the Medicare statute to state (1) that the Secretary's Medicare regulations "shall provide" that a hospital's costs in providing Hill-Burton free care to indigents are not reimbursable as "reasonable costs"; and (2) that the amendment "shall be effective" with respect to "any" Hill-Burton costs, except for those previously allowed by a final court of appeals judgment. The Conference Report that accompanied TEFRA expressly states that the purpose of Section 106 was merely to "clarify that Hill-Burton free care costs have never been, and are not, allowable for Medicare reimbursement purposes." H.R. Rep. No. 97-760, 97th Cong., 2d Sess. 431 (1982). The Secretary promulgated the regulations mandated by Section 106 on October 1, 1982. See 47 Fed. Reg. 43656-43658, to be codified at 42 C.F.R. 405.420. The court of appeals did not address, or rely on, Section 106 in its opinion.

appeals (including the decision below) and that the issue is not one of continuing importance. We refer the Court to our discussions in *Johnson County* and *St. James Hospital*, which establish that review of this issue is not warranted.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

AUGUST 1983

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[2]We are providing petitioner with copies of our Brief in Opposition in *Johnson County* and our Memorandum in Opposition in *St. James Hospital*.

Like the petitioners in *Johnson County* and *St. James Hospital*, petitioner in this case addresses the constitutionality of Section 106 of TEFRA. However, the court below did not rely on Section 106 in reaching its decision. See note 1, *supra*. Thus, that issue is not properly raised by this case.

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